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12 UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF WASHINGTON
14

15 NUVEEN QUALITY INCOME MUNICIPAL
16 FUND, INC; NUVEEN PREMIUM INCOME
17 MUNICIPAL FUND 4, INC.; STRONG
18 MUNICIPAL BOND FUND, INC.; SMITH
19 BARNEY MUNICIPAL FUND LIMITED
20 TERM; SMITH BARNEY MUNICIPAL
21 HIGH-INCOME FUND; and VANGUARD
22 HIGH-YIELD TAX-EXEMPT FUND,

23 Plaintiffs,
24

25 v.
26

27 PRUDENTIAL SECURITIES
28 INCORPORATED, a Delaware corporation;
29 WALKER PARKING
30 CONSULTANTS/ENGINEERS, INC., a
31 Michigan corporation; FOSTER PEPPER &
32 SHEFELMAN PLLC, a Washington
professional limited liability company;
SPOKANE DOWNTOWN FOUNDATION, a

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEC 17 2001

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

NO. CS-01-0127-EFS
Consolidated with
CS-01-0128-EFS

ANSWER AND DEFENSES
OF DEFENDANT SPOKANE
DOWNTOWN FOUNDATION

ANSWERS AND DEFENSES
OF DEFENDANT SPOKANE
DOWNTOWN FOUNDATION-1

ETTER, McMAHON, LAMBERSON & CLARY, P.C.
1600 PAULSEN CENTER, 421 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201-0401 (509) 747-9100

1 Washington corporation; PRESTON
2 GATES & ELLIS LLP, a Washington limited
3 liability partnership; CITIZENS
4 REALTY COMPANY, a Washington
5 corporation; LINCOLN INVESTMENT
6 COMPANY OF SPOKANE, a Washington
7 corporation; RPS MALL, L.L.C., a
8 Washington limited liability company; RPS
9 II, L.L.C., a Washington limited liability
10 company; RWR MANAGEMENT, INC., a
11 Washington corporation, doing business as
12 R. W. ROBIDEAUX AND COMPANY; CITY
13 OF SPOKANE, WASHINGTON, a first-
14 class charter city of the State of
15 Washington; SPOKANE PUBLIC PARKING
16 DEVELOPMENT AUTHORITY, an
17 unregistered Washington corporation, doing
18 business as RIVER PARK SQUARE
19 PARKING,

20 Defendants.

21 CITY OF SPOKANE,

22 Third-Party Plaintiff,

23 v.

24 ROY KOEGEN and ANNE K. KOEGEN, a
25 marital community, and PERKINS COIE,
26 LLP,

27 Third-Party Defendants.
28

29 The SPOKANE DOWNTOWN FOUNDATION (Foundation)
30
31 responds to and answers plaintiffs' Complaint as follows:
32

ANSWERS AND DEFENSES
OF DEFENDANT SPOKANE
DOWNTOWN FOUNDATION-2

ETTER, McMAHON, LAMBERSON & CLARY, P.C.
1600 PAULSEN CENTER, 421 WEST RIVERSIDE AVENUE
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I. JURISDICTION AND VENUE

1
2 1. - 2. This Defendant admits Federal subject matter jurisdiction,
3
4 and venue, only to the extent that plaintiffs sustain the requirements for a
5
6 Federal 10b-5 claim. Absent jurisdiction for a 10b-5 claim, the plaintiffs
7
8 claims lack jurisdiction, and jurisdiction is denied. Further, this Defendant
9
10 lacks knowledge in respect to paragraphs 1 and 2.

II. SUMMARY OF COMPLAINT

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13 3. - 5. This Defendant admits: It issued the subject bonds as a
14
15 non-profit entity; Prudential Securities, Inc., acted as the underwriter;
16
17 Foster Pepper & Shefelman, PLLC, acted as underwriter's counsel; the
18
19 Official Statements had certain attachments and references which are
20
21 self-descriptive; Walker Parking Consultants/Engineers, Inc., rendered
22
23 certain financial feasibility analyses and information; the Official
24
25 Statements show the Garage revenues as the sole source of payment;
26
27 certain resolutions and ordinances were adopted and passed by the City
28
29 of Spokane; and the project was viewed as being in the interest of the
30
31 citizens of Spokane for maintenance and revitalization of its downtown
32
core, and other civic and community benefits. Given the manner of the
plaintiffs' remaining contentions, this Defendant lacks knowledge.

IV. PARTIES

6. - 11. This Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 6 through 11.

12. Paragraph 12 requires no response by this defendant.

13. This Defendant admits Prudential Securities Inc. was a licensed and registered broker - dealer which conducted securities business in the State of Washington. This Defendant admits that Prudential acted as the underwriter for the Bonds and offered and sold the Bonds. Given the manner of plaintiffs' contentions, this Defendant lacks knowledge in respect to the remaining allegations.

14. This Defendant admits that John C. Moore was a Managing Director of Public Finance for Prudential Securities at pertinent times. Given the manner of contention, this Defendant lacks knowledge of the remaining allegations of paragraph 14.

15. This Defendant admits Walker Parking Consultants/Engineers Inc. specialized in providing consulting services, including the preparation of financial feasibility studies to public entity and private sector clients for the renovation and expansion of parking facilities, such as the Garage.

1 Given the manner of contention, this Defendant lacks knowledge of the
2 remaining allegations.
3

4 16. This Defendant admits that Walker was hired by the City of
5
6 Spokane to prepare a financial feasibility study of the existing Garage and
7
8 the proposed expansion and renovation of the Garage. Given the manner
9
10 of contention, this Defendant lacks knowledge of the remaining
11
12 allegations.

13 17. This Defendant admits that a financial feasibility analysis
14
15 commissioned by the City was issued in 1996, and that Walker was
16
17 recognized to be an expert in the areas covered by its analysis. However,
18
19 given the manner of contention, this Defendant lacks knowledge of the
20
21 remaining allegations.

22 18. This Defendant admits that Defendant Foster Pepper &
23
24 Shefelman, PLLC, is a Washington law firm. Further, this Defendant
25
26 admits that Foster Pepper & Shefelman was retained by Prudential and
27
28 acted in the capacity as underwriter's counsel. Given the manner of
29
30 contention, this Defendant lacks knowledge of the remaining allegations.

31 19. - 21. Again, this Defendant admits that Foster Pepper &
32
Shefelman was retained or employed as underwriter's counsel. Given

1 the manner of contention, this Defendant lacks knowledge of the
2 remaining contentions.
3

4 22. The Foundation admits it is a non-profit corporation as
5 described in the documents and instruments which comprise the
6 Transcript of Proceedings. This Defendant further admits that it was
7 served by a Board of Directors who were requested to serve voluntarily for
8 the purposes described in the Foundation's Amended Articles of
9 Incorporation. The Foundation denies being subject to the direct and
10 indirect control of the Developers and their representatives. To the extent
11 there are any, this defendant lacks knowledge of the remaining
12 contentions.
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20 23. This Defendant admits that Preston, Gates & Ellis, LLP, is a
21 Washington State law firm. Preston acted as issuer's counsel and bond
22 counsel for the Foundation, and in that capacity it issued bond opinions
23 and provided services. Given the manner of contention, this Defendant
24 lacks knowledge of plaintiffs' remaining contentions.
25
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29 24. - 27. Given the manner of contention, this Defendant lacks
30 knowledge of plaintiffs' allegations.
31
32

1 28. This Defendant lacks knowledge of the allegation that Elizabeth
2 Cowles is and was an owner of Cowles Publishing, although it admits that
3 she is believed to have some association with the company. This
4 Defendant admits the remaining allegations of paragraph 28.
5
6

7 29. - 33. This Defendant admits entity defendants identified in
8 paragraphs 29 through 32 were entities which conduct business in
9 Spokane, Washington. The Garage "Facility" was conveyed to the
10 Foundation, and then leased to the Spokane Public Development
11 Authority for the purpose of ultimately being transferred to the City, and
12 that the Foundation made payment for the Facility with proceeds from the
13 Bonds. This Defendant has insufficient knowledge of the control by
14 Elizabeth Cowles, and the remaining contentions in paragraphs 29 - 33.
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22 34. On information and belief, the contentions are true.
23

24 35. On information and belief, this Defendant believes that R.W.
25 Robideau had overall responsibility for his company, managed the River
26 Park properties on behalf of the Developers for a number of years and
27 was a representative in the Developers' efforts to redevelop and expand
28 River Park Square, including the Facility. On information and belief,
29 Robideau had knowledge of the garage reports and Official Statements.
30
31
32

1 This Defendant lacks knowledge of the remaining contentions, in the
2 manner alleged by plaintiffs.
3

4 36. The Foundation denies involvement in or culpability for
5 plaintiffs' contentions. This Defendant lacks knowledge of an alleged
6 scheme or artifice to defraud.
7

8
9 37. This Defendant admits the City of Spokane is a first class
10 charter city, and in the City's counter and cross claims it indicates that City
11 staff met with Walker and in the meeting certain appraisers were told that
12 an appraiser engaged would be expected to render an investment
13 appraisal based on Walker's operating projections. (City's Counterclaim
14 ... p. 31, par. 1.23). Given the manner of contention, this Defendant lacks
15 knowledge of the remaining contentions made by plaintiffs.
16
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22 38. This Defendant lacks knowledge of concealment, or falseness
23 on the part of the City. Given the manner of contention, this Defendant
24 lacks knowledge of the remaining contentions.
25
26

27 39. This Defendant has insufficient knowledge of registration status
28 of the Spokane Public Parking Development Authority, and alleged
29 fraudulent conduct by anyone. The Foundation denies involvement in or
30
31
32

1 culpability for plaintiffs' contentions. The remaining contentions are
2 believed to be true.
3

4 40. This Defendant lacks knowledge of an artificially inflated price
5 established by the Developers. While plaintiffs make no particular
6 contention in respect to the Foundation, the Foundation denies
7 involvement in or culpability for plaintiffs' contentions. The remaining
8 allegations are believed to be true.
9
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13 41. - 43. This Defendant denies plaintiffs' contentions in respect to
14 the Foundation. Further, this Defendant has insufficient knowledge.
15
16

17 **V. GENERAL ALLEGATIONS APPLICABLE TO**
18 **ALL CLAIMS FOR RELIEF**

19 **The Walker/Ernst & Young Reports.**
20

21 44. - 45. This Defendant has insufficient knowledge whether the
22 Garage had previously served as the "dedicated" parking facility for RPS
23 Mall and never had operating revenues in excess of \$1 Million. Upon
24 information and belief, the remaining contentions are believed to be true.
25
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28 46. - 47. This Defendant has insufficient knowledge of plaintiffs
29 allegations, in the manner alleged by plaintiffs.
30
31

32 48. - 49. Given the manner of contention, this Defendant lacks
knowledge.

1 50. - 52. This Defendant lacks knowledge of the allegations, in the
2 manner alleged by plaintiffs.
3

4 **The Walker Report**

5
6 53. - 62. This Defendant lacks knowledge and denies involvement
7 in, liability or culpability for plaintiffs' contentions. This Defendant lacks
8 knowledge of plaintiffs' allegations in respect to other defendants, in the
9 manner alleged by plaintiffs.
10
11

12 **The Garage Valuation**

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15 63. - 72. This Defendant lacks knowledge of and denies
16 involvement in, liability or culpability for plaintiffs' contention. Further, this
17 Defendant lacks knowledge in respect to other parties.
18
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20 73. This Defendant admits the City adopted Resolution No. 96-44,
21 but defer to the entire resolution for its content. Further, the Foundation
22 denies involvement in, liability or culpability for plaintiffs' contentions.
23
24

25 74. This Defendant acknowledges that Sabey Corporation owned
26 and operated a retail mall within the City of Spokane commonly referred to
27 as the Northtown Mall and was a competitor to the River Park Square
28 Mall. This Defendant lacks knowledge in respect to the remaining
29 contentions.
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1 75. - 78. This Defendant lacks knowledge of plaintiffs' allegations,
2 in the manner alleged by plaintiffs, and denies involvement in, liability or
3 culpability for plaintiffs' contentions.
4

5 79. This Defendant admits the City's passage of Resolution 97-2,
6 as expressed by the totality of the resolution. Given the manner of
7 contention, this Defendant lacks knowledge.
8
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11 **The Coopers & Lybrand Report**
12

13 80. - 85. This Defendant lacks knowledge of the allegations made
14 by plaintiffs, in the manner alleged by plaintiffs. Further, the Foundation
15 denies involvement in, liability or culpability for plaintiffs contentions.
16
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18 **ORDINANCE NO. C31823**
19

20 86. This Defendant admits that the City adopted Ordinance No.
21 C31823, and that the ordinance served as a credit enhancement to the
22 forthcoming bond issuance. This Defendant lacks knowledge of the
23 allegations made by plaintiffs, in the manner alleged by plaintiffs, and
24 defers to the totality of the ordinance, and appropriate history for its
25 meaning and effect.
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1 87. This Defendant lacks knowledge in respect to plaintiffs' legal
2 conclusions, and respectfully defers to the ordinance, and legally
3 competent legislative history.
4

5 88. This Defendant admits this allegation.
6

7 89. This Defendant incorporates its responses to paragraphs 86,
8 87, and 88, and lacks knowledge of the conclusions or contentions offered
9 in paragraph 89.
10
11

12 90. - 91. This Defendant lacks knowledge of plaintiffs' allegations,
13 in the manner alleged by plaintiffs, and further denies involvement in,
14 liability or culpability for plaintiffs' contentions in respect to the Foundation.
15
16

17 92. This Defendant lacks knowledge of the plaintiffs' allegations in
18 paragraph 92, in the manner alleged by plaintiffs. Further, this Defendant
19 denies the legal conclusions offered by plaintiffs. Further, the Foundation
20 denies involvement in, liability or culpability for plaintiffs' contentions, in
21 the manner alleged by plaintiffs.
22
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24 93. - 94. This Defendant denies involvement in, liability or
25 culpability for plaintiffs' contentions in respect to the Foundation. The
26 Foundation lacks knowledge of plaintiffs' contentions in respect to other
27 defendants.
28
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1 95. - 96. This Defendant lacks knowledge in respect to plaintiffs'
2 contentions.
3

4 97. This Defendant lacks knowledge of plaintiffs' contention.
5

6 98. This Defendant admits that the renovation was expected to be
7 conducted in two phases and that the Garage renovation and expansion
8 was to occur in the first phase, and that parking revenues were projected
9 to increase as tenant space was increasingly occupied. However, this
10 Defendant lacks knowledge of the remaining aspects of plaintiffs'
11 contentions.
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16 99. This Defendant lacks knowledge of plaintiffs' allegations, in the
17 manner alleged by plaintiffs, and further denies any liability or culpability
18 on the part of the Foundation for plaintiffs' contentions.
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22 100. This Defendant lacks knowledge of plaintiffs' contentions, and
23 denies liability or culpability on the part of the Foundation for plaintiffs'
24 contentions.
25
26

27 101. This Defendant lacks knowledge of plaintiffs' contentions, and
28 further denies liability or culpability for plaintiffs' contentions on the part of
29 the Foundation.
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1 102. This Defendant admits that renovation and expansion took
2 longer than projected, and would contribute to reduced Garage revenues.
3
4 This Defendant lacks knowledge of the remaining contentions, and denies
5 liability and culpability for plaintiffs' contentions on the part of the
6 Foundation.
7
8

9 103. This Defendant admits that Standard & Poors downgraded the
10 bonds, but lacks knowledge of the specific date and defers to the totality
11 of the Standard & Poors report with respect to the factors considered to
12 have contributed to the downgrade. Further, the Foundation lacks
13 knowledge of and denies involvement in, liability or culpability for plaintiffs'
14 remaining contentions.
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20 104. This Defendant lacks knowledge of plaintiffs' contentions.
21

22 105. This Defendant admits that the Project was subjected to
23 political volatility, and that as opponents of the Project attained political
24 influence their opposition increased. This Defendant lacks knowledge of
25 the point at which this occurred, and any remaining allegations or
26 inferences.
27
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31 106. This Defendant admits there was a second Standard & Poors
32 downgrade.

1 107. This Defendant lacks knowledge of plaintiffs' contentions, in
2 the manner alleged by plaintiffs, and with respect to the Foundation
3 denies a scheme to defraud or conceal.
4

5 108. - 109. This Defendant lacks knowledge of plaintiffs' allegations
6

7 110. - 111. This Defendant lacks knowledge of the designated
8 publications and lacks knowledge of contentions in respect to the
9 bondholders.
10

11 112. - 113. This Defendant lacks knowledge of plaintiffs'
12 contentions, and denies reference to a fraudulent scheme.
13

14 114. This Defendant lacks knowledge of a "grossly inflated value of
15 the garage," and on information and belief admits that revenues presently
16 fall short. This Defendant lacks knowledge and any remaining allegation
17 of liability or culpability, if any, is denied.
18

19 115. On information and belief, this Defendant acknowledges that
20 the City has commenced an action against Walker, however, this
21 Defendant lacks knowledge of the legal theories submitted therein.
22

23 116. - 117. The Foundation denies involvement in, liability or
24 culpability for plaintiffs' contentions. This Defendant lacks knowledge with
25 respect to the other defendants.
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FIRST CLAIM FOR RELIEF

118. This Defendants incorporates its responses to the preceding paragraphs.

119. - 126. This Defendant denies all allegations as they may pertain to the Foundation and lacks knowledge in respect to other parties.

SECOND CLAIM FOR RELIEF

127. This Defendant incorporates its responses to the preceding paragraphs.

128. - 134. This Defendant denies all allegations as they may pertain to the Foundation, and lacks knowledge in respect to other parties.

THIRD CLAIM FOR RELIEF

135. This Defendant incorporates its responses to the preceding paragraphs.

136. - 141. This Defendant denies all allegations as they may pertain to the Foundation, and lacks knowledge in respect to other parties.

FOURTH CLAIM FOR RELIEF

142. This Defendant incorporates its responses to the preceding paragraphs.

1 143. - 146. This Defendant denies all allegations as they may
2 pertain to the Foundation, and lacks knowledge as they may pertain to
3 other parties.
4

5
6 **DENIAL AND AMENDMENT**
7

8 147. To the extent that any allegation allegedly supports liability
9 against the Foundation and it was not previously denied, the same is
10 hereby denied. Further, this Defendant reserves the right to amend.
11
12

13 **AFFIRMATIVE DEFENSES**
14

15 As a further response, this Defendant submits the following
16 additional and affirmative defenses:
17

18 1. Plaintiffs' Complaint fails to state a claim against this Defendant
19 upon which relief can be granted.
20
21

22 2. Plaintiffs' claims of fraud against this Defendant are inadequately
23 pleaded.
24

25 3. Plaintiffs' claims are barred by applicable statutes of limitation
26 and/or laches.
27
28

29 4. Alternatively, in the exercise of reasonable care, this Defendant
30 did not and could not have known the facts upon which any state law
31
32

1 securities violations are based or as an instrumentality of a municipal or
2 quasi-municipal entity, it lacked scienter.
3

4 5. The Plaintiffs' losses were caused by factors and the acts or
5 omissions of other parties, or entities and were not caused by any act or
6 omission of this Defendant.
7
8

9 6. On information and belief, and as alleged by the City, Plaintiffs'
10 claims are barred by the doctrines of res judicata or collateral estoppel.
11
12

13 7. Plaintiffs' claims are barred by their lack of due diligence, and/or
14 reasonable care.
15

16 8. On information and belief, and as alleged by the City, Plaintiffs'
17 claims are barred by their agent(s) decision to go forward with the closing
18 of the Garage transaction in September, 1998, at a time when the
19 agent(s) had notice of matters for which plaintiffs now complain.
20
21
22

23 9. Any damages suffered by the plaintiffs were the proximate result
24 of conduct or negligence of persons or entities other than this Defendant,
25 and for whom this Defendant is not responsible.
26
27
28

29 10. Plaintiffs' claims are alternatively barred by ratification,
30 estoppel, or waiver.
31
32

1 11. The transaction documents provided for express allocation of
2 risk and responsibility.
3

4 12. Alternatively, the claims herein resulted from mutual mistake.
5

6 13. This Defendant is entitled to all defenses applicable to a non-
7 profit corporation, or volunteer.
8

9 14. If any aspect of the plaintiffs' contentions results in a judgment
10 or verdict affecting or against the Foundation, the Foundation is entitled to
11 allocation of fault and/or liability or judgment against the principal actor(s)
12 or party(ies).
13
14

15 15. The plaintiffs' claims lack jurisdiction.
16
17

18 **PRAYER FOR RELIEF**
19

20 WHEREFORE, having fully responded to the Complaints, this Defendant
21 requests that the Court grant the following relief:
22
23

24 1. Entry of a final judgment dismissing all claims against this
25 Defendant with prejudice and without an award of damages or other relief
26 against this Defendant.
27
28

29 2. Allocation of fault and/or liability or judgment against the principal
30 actor(s) or party(ies).
31
32

1 3. An award of reasonable fees and expenses incurred herein,
2 including reasonable attorneys' fees.
3

4 4. Such other relief as the Court may deem just.
5

6 RESPECTFULLY SUBMITTED THIS 17th day of December, 2001.
7

8 ETTER, McMAHON, LAMBERSON & CLARY, P.C.
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12 WILLIAM F. ETTER, WSBA#9158
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14 RAYMOND F. CLARY, WSBA#13802
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16 Attorneys for Spokane Downtown Foundation
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